



## **ISSUES**

The issues are: (1) whether appellant has met his burden of proof to expand the acceptance of his claim to include additional conditions as causally related to the accepted April 28, 2017 employment injury; and (2) whether appellant has met his burden of proof to establish disability from work for the period beginning October 24, 2017 causally related to the accepted April 28, 2017 employment injury.

## **FACTUAL HISTORY**

On April 28, 2017 appellant, then a 65-year-old building equipment mechanic, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained a muscle strain when he was climbing down a ladder and lost his footing while in the performance of duty. He stopped work on April 28, 2017 and worked intermittently thereafter.

On April 28, 2017 appellant was treated in the emergency room by Dr. Omar Corujo Vazquez, a Board-certified emergency room physician, for back pain radiating down his legs that developed after he twisted his back while descending a ladder at work. Dr. Vazquez diagnosed muscle strain and radicular pain. In a work excuse note of even date, he indicated that appellant was disabled from work through April 30, 2017.

Appellant was treated by Dr. Craig Capeci, a Board-certified orthopedist, on May 1, 2017 for a low back injury sustained at work when he was descending a ladder. Dr. Capeci diagnosed low back strain and spasm.

On May 18, 2017 Dr. Martin Quirno, a Board-certified orthopedist, evaluated appellant for radiating low back pain. Appellant reported descending a ladder at work when he slipped. X-rays of the lumbar spine revealed mild degenerative disc disease at L5-S1 and L2-3 with no spondylolisthesis and no fractures. Dr. Quirno diagnosed low back pain status post work accident on April 28, 2017, bilateral lower extremity radiculopathy, and numbness and weakness slightly worse on the left. In a September 14, 2017 attending physician's report (Form CA-20), Dr. Quirno recounted a history of the low back injury occurring on April 28, 2017. He diagnosed radiculopathy of the lumbar region. Dr. Quirno affirmed that the diagnosed conditions were caused or aggravated by the described employment incident. He noted that appellant was totally disabled from work from April 28, 2017 through February 27, 2018.

A magnetic resonance imaging (MRI) scan of the lumbar spine dated May 31, 2017 revealed a medium size L4-5 posterolateral/foraminal disc herniation associated with moderate congenital and acquired spinal canal stenosis, mild-to-moderate left foraminal narrowing slightly compressing the left L4 nerve root, small left L5-S1 foraminal disc herniation, disc bulging and degenerative changes at remaining levels resulting in mild-to-moderate L2-3, and mild L3-4 congenital and acquired spinal canal stenosis.

On June 8 and August 15, 2017 Dr. Syed Husain, a Board-certified physiatrist, treated appellant for low back and leg pain that developed when he was descending a ladder at work and slipped. Findings on examination revealed limited range of motion of the lumbar spine, tenderness to palpation over L3, L4, L5 facet joints bilaterally, slightly diminished sensation in the lower

extremities, and positive straight leg test on the left. Dr. Husain diagnosed lumbar radicular pain and recommended a bilateral L4-5 and L5-S1 transforaminal epidural steroid injection and a back brace.

On December 1, 2017 OWCP accepted appellant's claim for low back strain.

OWCP received additional evidence. On June 1, 2017 Dr. Quirno related that appellant continued to complain of low back pain with bilateral lower extremity radiculopathy and weakness after a fall from a ladder at work. He reviewed an MRI scan, which revealed bilateral recess stenosis at L4-5 with a large left disc bulge producing severe bilateral recess stenosis with severe foraminal stenosis at L4-5. Dr. Quirno diagnosed L4-5 severe bilateral recess stenosis and severe foraminal stenosis secondary to a large disc bulge. He recommended epidural injections and physical therapy.

In subsequent reports dated August 10 through October 26, 2017, Dr. Quirno noted that appellant presented with persistent lower back pain, progressive weakness, and lower extremity radiculopathy. Appellant reported that he did not begin treatment because OWCP had not approved his claim.

In duty status reports (Form CA-17) dated December 22, 2017 and January 2, 2018, Dr. Quirno noted clinical findings of low back pain. He noted the diagnosis due to injury was radiculopathy of the lumbar region and indicated that appellant could not work. Dr. Quirno treated appellant again on December 28, 2017 for significant weakness and radiculopathy on the left side. He noted that appellant began physical therapy. In a January 2, 2018 attending physician's report (Form CA-20), Dr. Quirno noted a history of the low back injury occurring on April 28, 2017. He diagnosed radiculopathy of the lumbar region. Dr. Quirno affirmed by checking a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the described employment incident. Dr. Quirno noted the period of total disability began on April 18, 2017.

On January 23 and February 1, 2018 appellant filed claims for compensation (Form CA-7) for work-related disability for the period commencing October 24, 2017.

In a development letter dated February 7, 2018, OWCP requested that appellant submit medical evidence to support disability during the period claimed causally related to the accepted April 28, 2017 employment injury. It afforded him 30 days to submit the requested evidence.

By decision dated February 22, 2018, OWCP denied expansion of the acceptance of appellant's claim to include the additional conditions of lumbar radiculopathy, disc bulge at L4-5, foraminal stenosis at left L4-5, L4-5 bilateral recess stenosis, and lumbar spine stenosis.

Appellant submitted additional evidence. On February 20, 2018 Dr. Quirno examined appellant who reported bilateral lower extremity radiculopathy and significant weakness. He reported improvement with physical therapy.

By decision dated April 3, 2018, OWCP denied appellant's claims for wage-loss compensation, finding that he had not established disability from work commencing October 24, 2017 causally related to the accepted April 28, 2017 employment injury.

Appellant continued to submit additional evidence. In a July 10, 2017 report, Dr. Jeffrey Benjamin, a Board-certified neurologist, treated appellant for low back pain radiating into the left lower extremity and left foot weakness. Appellant reported that on April 28, 2017 he was descending a vertical ladder and slipped injuring his back. Findings on examination revealed decreased bilateral grip strength, decreased light touch and pinprick in the distal right C7, left drop foot, and tenderness over the bilateral lumbar paraspinal musculature. Dr. Benjamin diagnosed lumbosacral radiculopathy, cervical radiculopathy, and carpal tunnel syndrome.

In a report dated February 6, 2018, Dr. Husain treated appellant, reporting good pain relief with physical therapy; however, appellant continued to have back pain radiating into the legs. He noted tenderness to palpation over the L3, L4, and L5 facet joints bilaterally and diminished sensation to light touch in the lower extremities. Dr. Husain diagnosed lumbar radiculopathy and recommended additional physical therapy and epidural injections.

On April 12, 2018 Dr. Quirno related treating appellant since May 18, 2017 for spinal stenosis, large disc bulge at L4-5, and partial foot drop. Appellant experienced improvement in his symptoms secondary to physical therapy. Dr. Quirno diagnosed lumbar sprain and severe spinal stenosis. On May 17 and August 16, 2018 appellant presented with left buttock pain and reported being assaulted in the subway two weeks prior, jolting his spine. X-rays revealed mild degenerative disc disease at L2-3, L3-4, and L4-5. Dr. Quirno diagnosed left buttock pain after an assault. On January 10, 2019 he again recommended physical therapy and epidural injections.

On February 18, 2019 appellant, through counsel, requested reconsideration on a February 22, 2018 decision concerning expansion of the acceptance of the claim.

On March 28, 2019 appellant requested reconsideration of the decision dated April 3, 2018.

By decision dated May 16, 2019, OWCP denied modification of both the February 22, 2018 decision concerning expansion of the claim and the April 3, 2018 OWCP decision denying appellant's claims for wage-loss compensation for disability from work commencing October 24, 2017.

Appellant continued to submit additional evidence. In a May 9, 2019 report, Dr. Quirno noted that appellant was assaulted on May 17, 2018 and developed significant back pain. He prescribed another trial of physical therapy and epidural injections. On May 30, 2019 Dr. Quirno provided a summary of appellant's treatment from May 18, 2017 through May 9, 2019. He provided a history of injury of the April 28, 2017 work incident and an assault that occurred on May 17, 2018. Dr. Quirno noted that appellant did not have low back symptoms prior to the work accident on April 28, 2017. He opined that appellant developed left leg radiculopathy, back pain, and left partial foot drop, which resolved after physical therapy; however, these symptoms returned after he was assaulted on May 17, 2018.

On April 21, 2020 appellant requested reconsideration.

By decision dated May 5, 2020, OWCP denied modification of the May 16, 2019 decision.

### **LEGAL PRECEDENT -- ISSUE 1**

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>3</sup>

To establish causal relationship between the condition as well as any additional conditions claimed and the employment injury, an employee must submit rationalized medical evidence.<sup>4</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>5</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met his burden of proof to establish that the acceptance of his claim should be expanded to include additional conditions causally related to the accepted April 28, 2017 employment injury.

In reports dated May 18, 2017 through May 9, 2019, Dr. Quirno noted his treatment of appellant for low back pain and diagnosed additional conditions including: low back pain status post work accident on April 28, 2017 with bilateral lower extremity radiculopathy, numbness, and weakness in the left lower extremity; L4-5 severe bilateral recess stenosis and severe foraminal stenosis secondary to a large disc bulge; and partial foot drop.” In none of those reports, however, did Dr. Quirno provide an opinion regarding causal relationship between appellant’s additional diagnosed conditions and the accepted April 28, 2017 employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee’s condition or disability is of no probative value on the issue of causal relationship.<sup>6</sup> As such, this evidence is insufficient to establish expansion of the claim.

In Form CA-17 reports dated December 22, 2017 and January 2, 2018, Dr. Quirno noted that the diagnosis due to injury was radiculopathy of the lumbar region and indicated that appellant could not work. He opined that the diagnosed conditions were caused or aggravated by the described employment incident. Dr. Quirno, however, did not provide rationale explaining how appellant’s diagnosed conditions were caused or aggravated by the April 28, 2017 accepted employment injury. He did not explain how the mechanism of injury would have physiologically caused or aggravated the additional diagnosed conditions.<sup>7</sup> As Dr. Quirno failed to provide

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<sup>3</sup> *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>4</sup> *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

<sup>5</sup> *T.K.*, *id.*; *I.J.*, 59 ECAB 408 (2008).

<sup>6</sup> *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>7</sup> *See F.H.*, Docket No. 18-1238 (issued January 18, 2019); *J.R.*, Docket No. 18-0206 (issued October 15, 2018).

medical rationale in support of a causation finding, these reports are insufficient to meet appellant's burden of proof.<sup>8</sup>

In Form CA-20 reports dated September 14, 2017 and January 2, 2018, Dr. Quirno diagnosed radiculopathy of the lumbar region and checked a box marked "Yes" indicating that the condition was caused or aggravated by an employment activity. The Board has held, however, that an opinion on causal relationship with an affirmative check mark, without more by the way of medical rationale, is insufficient to establish the claim.<sup>9</sup>

On May 30, 2019 Dr. Quirno provided a summary of appellant's medical treatment through May 9, 2019 and a history of the April 28, 2017 employment incident and an assault that occurred on May 17, 2018. He noted that appellant did not have low back symptoms prior to the employment incident on April 28, 2017. The Board has held that an opinion that the employee was asymptomatic before the injury is insufficient, without supporting rationale, to establish causal relationship.<sup>10</sup>

Reports from Dr. Vazquez dated April 28, 2017 noted appellant's treatment for radiating back pain. He diagnosed muscle strain and radicular pain and advised that appellant was disabled through April 30, 2017. Similarly, on May 1, 2017 Dr. Capeci treated appellant for a low back injury and diagnosed low back strain and spasm. Reports from Dr. Husain dated June 8 and August 15, 2017 and February 6, 2018, related treatment for low back and leg pain. Dr. Husain diagnosed lumbar radicular pain. Likewise, Dr. Benjamin treated appellant on July 10, 2017 for radiating low back pain and left foot weakness that developed on April 28, 2017. He diagnosed lumbosacral radiculopathy, cervical radiculopathy, and carpal tunnel syndrome. None of these physicians, however, provided an opinion regarding causal relationship between appellant's additional diagnosed conditions and the accepted employment injury. As noted above, the Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>11</sup> As such, these reports are insufficient to establish expansion of the claim.

Appellant submitted multiple diagnostic testing reports. The Board has held that diagnostic studies, standing alone, are of limited probative value as they do not address whether the employment injury caused any of the diagnosed conditions.<sup>12</sup>

As the medical evidence of record is insufficient to establish causal relationship between appellant's additional diagnosed conditions and the accepted employment injury, the Board finds that appellant has not met his burden of proof.

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<sup>8</sup> *M.C.*, Docket No. 18-0361 (issued August 15, 2018).

<sup>9</sup> *See D.S.*, Docket No. 21-0037 (issued May 27, 2021); *Richard G. Chasse*, Docket No. 99-1574 (issued June 27, 2000).

<sup>10</sup> *J.F.*, Docket No. 19-1694 (issued March 18, 2020); *Kimper Lee*, 45 ECAB 565 (1994).

<sup>11</sup> *Supra* note 8.

<sup>12</sup> *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

## **LEGAL PRECEDENT -- ISSUE 2**

An employee seeking benefits under FECA<sup>13</sup> has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>14</sup> For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.<sup>15</sup> Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.<sup>16</sup>

Under FECA, the term disability means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.<sup>17</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.<sup>18</sup>

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.<sup>19</sup> The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>20</sup>

## **ANALYSIS -- ISSUE 2**

The Board finds that appellant has not met his burden of proof to establish disability for the period commencing October 24, 2017, causally related to his accepted April 28, 2017 employment injury.

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<sup>13</sup> *Supra* note 2.

<sup>14</sup> *See D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>15</sup> *See M.B.*, Docket No. 18-1455 (issued March 11, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>16</sup> *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

<sup>17</sup> *Id.* at § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>18</sup> *See G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Merle J. Marceau*, 53 ECAB 197 (2001).

<sup>19</sup> *See S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

<sup>20</sup> *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

In reports dated October 26 and December 28, 2017 and February 20, 2018, Dr. Quirno treated appellant for persistent lower back pain, progressive weakness, and bilateral lower extremity radiculopathy. Dr. Husain treated appellant on February 6, 2018 for back pain radiating into the legs and diagnosed lumbar radiculopathy. However, Drs. Quirno and Husain do not specifically address dates of disability or offer an opinion regarding appellant's disability from work for the period commencing October 24, 2017.<sup>21</sup> Accordingly, their reports are of no probative value and are insufficient to establish appellant's claim for compensation.<sup>22</sup>

On April 12, 2018 Dr. Quirno related treating appellant since May 18, 2017 for spinal stenosis and large disc bulge at L4-5 and partial foot drop. He diagnosed lumbar sprain and severe spinal stenosis. While he provided a diagnoses of lumbar sprain, Dr. Quirno did not provide an opinion regarding appellant's disability from work commencing October 24, 2017.<sup>23</sup> Without a medical explanation, supported by objective findings, explaining why appellant was disabled on specific dates due to the accepted employment injury, appellant would be self-certifying disability.<sup>24</sup> Thus, this report is of no probative value and insufficient to establish the claim.

In Form CA-17 reports dated December 22, 2017 and January 2, 2018, Dr. Quirno noted the diagnosis due to injury of radiculopathy of the lumbar region and indicated that appellant could not work. Similarly, in a Form CA-20 report dated January 2, 2018, he diagnosed radiculopathy of the lumbar region. Dr. Quirno opined that the diagnosed conditions were caused or aggravated by the described employment incident. He noted that the period of total disability began on April 18, 2017. Dr. Quirno, however, did not otherwise provide an opinion on whether appellant was disabled from work during the claimed period due to his accepted employment injury. Accordingly, this report is of no probative value and is insufficient to establish appellant's claim for compensation.<sup>25</sup>

In a May 30, 2019 report, Dr. Quirno provided a summary of appellant's treatment from May 18, 2017 through May 9, 2019 and a history of the April 28, 2017 work incident and the assault that occurred on May 17, 2018. He noted that appellant did not have low back symptoms prior to the work accident on April 28, 2017 and thereafter developed left leg radiculopathy, back pain, and left partial foot drop. However, these reports are of no probative value because, despite the fact that Dr. Quirno mentioned an April 28, 2017 employment injury, he did not provide an opinion that appellant was disabled from work during the claimed period, beginning October 24,

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<sup>21</sup> *Supra* note 8; *see also William A. Archer*, 55 ECAB 674 (2004) (the Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of claimed disability).

<sup>22</sup> *See M.M.*, Docket No. 18-0817 (issued May 17, 2019); *M.C.*, Docket No. 16-1238 (issued January 26, 2017).

<sup>23</sup> *Supra* note 21.

<sup>24</sup> *See B.K.*, Docket No. 18-386 (issued September 14, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also C.S.*, Docket No. 17-1686 (issued February 5, 2019).

<sup>25</sup> *Supra* note 21.



2017, causally related to the accepted April 28, 2017 lower back strain.<sup>26</sup> Therefore, these reports are insufficient to establish his claim.

In other reports dated May 17, 2018 through May 9, 2019, Dr. Quirno diagnosed left buttock pain after a May 17, 2018 subway incident. As these reports do not address the issue of disability stemming from the April 28, 2017 employment injury, they are of no probative value.<sup>27</sup>

A July 10, 2017 report from Dr. Benjamin, predates the claimed period of disability and thus is not relevant to the specific period of disability claimed.<sup>28</sup> Thus, this report is insufficient to establish appellant's disability claims.

As the medical evidence of record is insufficient to establish disability from work commencing October 24, 2017 causally related to the accepted April 28, 2017 employment injury, the Board finds that appellant has not met his burden of proof

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that the acceptance of his claim should be expanded to include additional conditions causally related to the accepted April 28, 2017 employment injury. The Board further finds that he has not met his burden of proof to establish disability from work for the period commencing October 24, 2017 causally related to his accepted April 28, 2017 employment injury.

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<sup>26</sup> *Id.*

<sup>27</sup> *Supra* note 21.

<sup>28</sup> *See E.B.*, Docket No. 17-0875 (issued December 13, 2018); *C.L.*, Docket No. 16-0004 (issued June 14, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 5, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 2, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board